

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-4397

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In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

JEROME SPRINGER

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
TUESDAY, NOVEMBER 18, 2008
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 1:25 PM.

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A P P E A R A N C E S:

ROSELLI & GRIEGEL, PC
BY: JAMES LAZZARO ESQUIRE
1337 STATE HIGHWAY 33
HAMILTON SQUARE, NEW JERSEY 08690
609-586-2257
ATTORNEYS FOR THE DEFENDANTS

1 JUDGE BISSELL: At this point I'm
2 reopening proceedings in the case of Jerome Springer,
3 S-P-R-I-N-G-E-R, docket number 08-4397.

4 This opinion/report is being issued
5 pursuant to the directives of Order of Reference to a
6 Special Master and the Special Master's Agreement and
7 the guiding principles of law which underlie this
8 decision to be applied to the facts upon which it is
9 based as set forth in the jury instructions in the
10 Walker and Mejias jury charges to the extent
11 applicable to the allegations of Mr. Springer.

12 As finalized after review under Local
13 Civil Rule 52.1, this transcript will constitute the
14 written report required under paragraph seven of the
15 Order of Reference to a Special Master.

16 Mr. Springer was on A Unit on or about
17 August 2nd, 1997 when the events that happened to him
18 occurred. And in this case I find that he has
19 established the events as he's described them.

20 By way of a little background, within
21 some two to three weeks preceding and leading up to
22 August 2nd he had had operations for two hernias, one
23 of them in the groin area and the other in the area
24 of his belly button and was still experiencing
25 discomfort, still had stitches in place and was also

1 needing changes of bandages in that time period. The
2 record in this matter including contemporaneous
3 documents regarding his treatment establishes that.

4 I find that Mr. Springer's recounting
5 of the events that occurred to him which appears on
6 his direct examination beginning at page 113 of the
7 transcript of September 30, 2008 was credible.
8 Rather than try to be too selective there at the risk
9 of perhaps taking some time, I'm going to read it at
10 length.

11 He's asked to describe the surgery
12 which took place earlier. He said:

13 "I had two hernias, one in the
14 umbilical cord and the other in the lower -- in
15 between my legs.

16 "Question: So at some point after the
17 surgery you were sent back to Bayside?

18 "Answer: Yes.

19 "Question: And do you know if the
20 officers at Bayside were aware of your situation and
21 the recent surgery?

22 "Answer: Yes.

23 "Question: How do you know?

24 "Answer: Because when I came in, I
25 couldn't walk and you could see I still had big

1 patches on me that was kind of red.

2 "Question: You said big patches.

3 Where?

4 "Answer: I had a patch on my stomach.

5 All I could wear was an undershirt because it was

6 still leaking.

7 "Question: And were the patches

8 obvious or were they in an area where they could be

9 seen?

10 "Answer: Yes, because I had an

11 undershirt on, you could see it right through the

12 undershirt.

13 "Question: Let's talk about that

14 night. You said you were on the bottom bunk?

15 "Answer: Yes.

16 "Question: SOG arrived at your unit?

17 "Answer: Yes.

18 "Question: What happened after?

19 "Answer: They told me to get under the

20 bunk. I couldn't even get off the bunk.

21 "Question: What did you do?

22 "Answer: I tried to explain to them,

23 look, I just had surgery. I'll try to get off the

24 bunk. The man didn't care. He snatched me by the

25 back of the shirt and throw me out the room to the

1 post.

2 "Question: Onto the post?

3 "Answer: Yeah, there was a post right
4 in front of my door, like a corner, a post right
5 there.

6 "Question: Describe it.

7 "Answer: A beam.

8 "Question: A beam?

9 "Answer: A beam.

10 "Question: Tell me how you were
11 thrown.

12 "Answer: Head first out the door:

13 "Question: And what part of your body
14 struck the post?

15 "Answer: My head -- when I hit, I hit
16 flush, my head just went right up on it. I slid
17 right up on it and then slid down the wall.

18 "Question: Did you hit the floor?

19 "Answer: Yes.

20 "Question: Were you injured as a
21 result of that?

22 "Answer: My stomach opened and I had a
23 knot in my forehead.

24 "Question: Describe your injuries.

25 "Answer: Well, where I had surgery

1 they opened it back up. Right there on my forehead a
2 knot grew there.

3 "Question: And when you struck the
4 post, describe your pain.

5 "Answer: Pain wasn't even the word.
6 Can't describe it. There is not a word for it. I
7 teared up.

8 "Question: When you hit the floor, did
9 anything happen after that?

10 "Answer: Yes, junior officer seen it
11 was me, starting screaming out not him, hold on, not
12 him, he just had -- I'll be right down there and he
13 came running down.

14 "Question: So did you see him running
15 down towards you?

16 "Answer: Yes.

17 "Question: Do you know who he was?

18 "Answer: I forgot his name because
19 it's been so long. He was an old man, a unit
20 officer. There was only two of them. He was the
21 only one. He had been there for years. I forgot his
22 name.

23 "Question: Do you know approximately
24 what time of day or night it was?

25 "Answer: It was in the morning.

1 "Question: Early in the morning?

2 "Answer: Wasn't early, but around
3 lunchtime, sometime around there. They came in just
4 before lunch. They came running in the unit.

5 "Question: So after the unit officer
6 arrived where you were, what happened, if anything,
7 at that point?

8 "Answer: Well one officer had the back
9 of my neck, had me laying on the floor with my hands
10 spread out. So when he got there he said hold it,
11 let him up. When they picked me up, everybody seen
12 that my blood just started leaking again. They seen
13 the blood leaking through my undershirt and everybody
14 asked me what happened. He said the man just had an
15 operation. So they took me to the gym."

16 And then he describes his escort to the
17 gym which is uneventful, talks about being seated in
18 the gym, talks about someone with a dog approaching
19 him in the gymnasium. And the testimony resumes in
20 the middle of page 118.

21 He says: "And I leaned back and he
22 [the officer he's talking about] seen my shirt was
23 full of blood and called the officers and they took
24 me to the infirmary.

25 "Question: When you arrived at the

1 infirmary, were you treated?

2 "Answer: I was treated and sent right
3 to Saint Francis.

4 "Question: From the infirmary?

5 "Answer: Yes.

6 "Question: Same night, same day?

7 "Answer: Same day.

8 "Question: What happened at Saint
9 Francis?

10 "Answer: They had to restitch it and
11 put another filter in it, another drain.

12 "Question: So it had to be restitched?

13 "Answer: Yes.

14 "Question: And drained?

15 "Answer: And drained.

16 "Question: Were you prescribed any
17 medication or anything for pain?

18 "Answer: Yeah, they shot me up with
19 something and they were giving me pain pills,
20 codeine, whatever it was."

21 Mr. Springer then talks a little bit
22 more about his treatment at Saint Francis and the
23 instructions that took place there. He said he was
24 at Saint Francis about three or four hours and then
25 sent back to Bayside. He stayed in the infirmary for

1 two nights upon his return to Bayside from Saint
2 Francis and then went back to A Unit.

3 Then he said beginning at page 120:
4 "Did anything happen to you after that point?" [Once
5 again we're now still in the vicinity of the first
6 week in August.]

7 "Answer: Yes, I talked to Charlie
8 Ellis.

9 "Question: Mr. Ellis?

10 "Answer: Yes.

11 "Question: What was your
12 understanding of Mr. Ellis' position?

13 "Answer: He said he would look into
14 it. He didn't say nothing else. I didn't see him
15 after that.

16 "Question: When you spoke to Mr.
17 Ellis --

18 "Answer: I don't know what happened.

19 "Question: What did you tell him?

20 "Answer: I told him that they threw me
21 out the room head first and that they busted my
22 stomach back open. And he said he was going to look
23 into it. And I never heard nothing back.

24 "Question: So you haven't heard
25 anything since?

1 "Answer: No.

2 "Question: From Mr. Ellis?

3 "Answer: No, I never heard nothing
4 back from Mr. Ellis after that.

5 "Question: How long did you suffer
6 from this particular treatment, do you know?

7 "Answer: Well, I went back to Saint
8 Francis after that about three or four times because
9 they kept having to drain my stomach after that.
10 They said it should have healed, but it didn't heal
11 properly because they had to restitch it. They said
12 it didn't heal properly. So I kept having problems
13 with it.

14 "Question: So you continued to seek
15 treatment at Saint Francis and the infirmary?

16 "Answer: Yes.

17 "Question: Did you complain to anyone
18 else at Bayside about what happened?

19 "Answer: No, because I was shaky about
20 talking to anybody because of the position that was
21 going on there.

22 "Question: What do you mean? Were you
23 threatened?

24 "Answer: Yeah, if you said something
25 about it, they would take care of you. I didn't want

1 to be -- I was already jacked up. I didn't want to
2 get jacked up even worse.

3 "Question: Did you file an
4 administrative remedy form in this case?

5 "Answer: No, I didn't.

6 "Question: Why not?

7 "Answer: Because I was told that I had
8 no reason to file one.

9 "Question: And you said you were told.
10 Did someone tell you -- anyone specific tell you?

11 "Answer: Yeah, I don't know the
12 sergeant's name.

13 "Question: It was a sergeant?

14 "Answer: Yeah, he was a sergeant then.
15 Belder.

16 "Question: Did you say Belder?

17 "Answer: I'm trying to think of his
18 name. I can't think of his name. I know it started
19 with a B."

20 That excerpt concludes at page 122.

21 There was nothing offered to refute the
22 recounting by Mr. Springer of the events which
23 occurred to him and certainly nothing, either by
24 direct evidence or by inference, that would indicate
25 that his description of this matter is inaccurate.

1 If Mr. Springer had, in fact, been
2 fully able bodied at the time of his extraction and
3 had resisted or disobeyed any orders in terms of how
4 he was to get off of his bunk, and whether he was to
5 crawl under the bunk in order to free up a space to
6 handle other inmates and so forth, and if he was then
7 subjected to some corporal discipline for failure to
8 do that, that might be one thing. But here is a
9 situation where the Bayside administration, and I
10 think by appropriate inference those whom they bring
11 in to help with the administration of the prison at a
12 time like this, are charged with knowledge (and
13 certainly the housing officer on the wing had actual
14 knowledge) of his physical condition and the fact
15 that he was recovering from serious surgery which was
16 administered such a very short time before. As we
17 know, of course, the housing officer when he
18 witnessed this conduct, responded appropriately, but
19 too late.

20 There is a doctrine in some aspects of
21 the law which says you take your victims as you find
22 them. There is absolutely no doubt in my mind here,
23 number one, that the SOGs did not hesitate in the
24 slightest when Mr. Springer mentioned his condition
25 to them. They chose either to ignore it or to

1 consider him a liar at the time of the events. And
2 they proceeded to administer corporal authority, if I
3 can put it politely, on Mr. Springer with the results
4 that he described as set forth above.

5 I do find also, however, that while
6 this activity exacerbated Mr. Springer's injury, it,
7 of course, was not the sole cause of it and that
8 there is every reason to believe that he would have
9 required continuing treatment, dressing changes,
10 perhaps even problems with leakage in the future.
11 Yet some of those problems obviously are the result
12 of the actions that were taken against him and the
13 need to restitch an area that had already been
14 stitched, a circumstance that often leads to
15 difficulties.

16 I find in this case that the actions
17 taken against him here had serious sequelae, impaired
18 his healing process and exacerbated the physical
19 condition which he had, although it did eventually
20 heal and apparently presents no further ultimate
21 permanent problems.

22 Now, there was some allusion both in
23 the direct examination and in Mr. Springer's
24 cross-examination to the exhaustion of administrative
25 remedies issue. He was examined and it was

1 determined that there were procedures available at
2 Southwoods which he could have implemented. However,
3 I find in this case that Mr. Springer is truthful in
4 his testimony that a sergeant at Bayside advised him
5 that he didn't have to file an Administrative Remedy
6 Form in this matter. Why that occurred, I have no
7 way of knowing, but Mr. Springer made an inquiry, was
8 told by someone in authority that he did not have to
9 file an Administrative Remedy Form and under those
10 circumstances was at least lulled into a situation
11 where he had every reason to believe that no
12 Administrative Remedy Form would be necessary.

13 Furthermore, he didn't stay at Bayside
14 very long and even though we've come to learn that
15 other institutions allow you to file ARFs regarding
16 events other than in that very prison, to wit in this
17 case Bayside, I find in this case that a person in
18 authority, a person upon whom one could reasonably
19 rely with regard to statements of this kind did, in
20 fact, advise him that no Administrative Remedy Form
21 would be needed. Whether or not one considers this
22 in the nature of an estoppel or a waiver on behalf of
23 the defendants, in this case the seargent's statement
24 excuses the exhaustion of administrative remedies
25 that might have been available to the plaintiff, and

1 I find that that defense has not been sustained.

2 For the reasons set forth above, I find
3 that there was indeed excessive, unnecessary and
4 sadistic force imposed upon Mr. Springer here within
5 the contemplation of those legal principles.
6 However, in light of the fact that the misconduct of
7 the SOG officers here was not prolonged, was not
8 repeated, was promptly brought to a halt when the
9 housing officer advised them of who Mr. Springer was,
10 that while it is actionable for the recovery of
11 compensatory damages, I do not find that this assault
12 visited upon him rose to the level of being so
13 egregious as to support a claim for punitive damages
14 under the applicable legal standards that we are
15 employing in this case including the jury
16 instructions in those prior cases on these standards
17 for punitive damages.

18 Finally, although not every item of
19 evidence has been discussed in this opinion/report,
20 all evidence presented to the Special Master was
21 reviewed and considered. I find that the injury
22 inflicted here was actionable. I find that the
23 injury was acute initially and remained recurrent and
24 generated a continuing problem in terms of the
25 healing of the hernia surgery in the vicinity of his

1 abdomen. It did not lead to continuing pain;
2 however, it did lead to immediate and acute pain and
3 also impaired Mr. Springer's activities for some time
4 thereafter.

5 Accordingly, I recommend in this report
6 that the district court enter an award of
7 compensatory damages in the amount of 12 thousand
8 dollars in Mr. Springer's favor.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni
Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: November 18, 2008